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Taxation -- Medical Deduction -- Travel Expenses

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TAXATION — MEDICAL DEDUCTION — TRAVEL EXPENSES

The taxpayer, upon the advice of his physician, traveled to a warmer climate to improve and alleviate his poor health due to a stroke. His wife's companionship was also advised. On a joint return, expenses of travel, room and meals for both the taxpayer and his wife were disallowed by the commissioner. Suit was brought by the taxpayer to recover the amount paid on the deficiency assessment for the year 1949. *Held*, the expense of room and meals incurred by both the taxpayer and his wife, and the transportation expense of the taxpayer, are deductible as medical expenses. *Embry's Estate v. Gray*, 143 F. Supp. 603 (W.D.Ky. 1956).

Medical expenses — more specifically, expenses incurred while sojourning to a different climate or environment for reasons of physical enhancement — have been the subject of much uncertainty and vague delineation. Since 1942, when the medical deduction first appeared[1] on the federal income tax scene, cases and rulings, although scant,[2] have made evident the problems of distinguishing between the legitimate motive, presented by most cases, and motive based upon the attractiveness of having the government, by tax deduction, subsidize a vacation.

The decision in the instant case is an unusually liberal interpretation of the medical deduction provision of the 1939 code. Added significance may be given to this holding when considered in the light of the express legislative[3] and administrative[4] policy and the provisions of the 1954 code.[5] It is the purpose of this paper to analyze the case and statutory material in regard to expenses incurred during trips for so-called health reasons and the significance of the principal case in the light of this development.

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1. Section 23 of the 1939 Internal Revenue Code, as amended in 1942, provided: In computing net income there shall be allowed deductions: . . . (x) *Medical, dental, etc. expenses.* Expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent specified in § 25 (b) (3) . . . The term "medical care," as used in this subsection, shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body. . . .

2. Eight cases and rulings, only two of which were appealed to, and resolved, in the Circuit Court. Stringham v. Commissioner, 12 TC 580, *aff'd* 183 F.2d 579 (6th Cir. 1949) and Ochs v. Commissioner, 195 F.2d 692 (2d Cir. 1952), *cert. denied*, 344 U.S. 827 (1952).

3. Hearings of the Senate Finance Committee on H. R. 8300, 83rd Congress, 2nd Session, Part I, p. 24.

4. Proposed U.S. Treas. Reg. § 1.213-1 (e) (iv) and (v). See text preceding note 17 *infra*.

5. Section 213 (e) of the 1954 Internal Revenue Code provides:
(1) The term "Medical care" means amounts paid —
(A) for the diagnosis, care, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body (including amounts paid for . . . health insurance) or
(B) for *transportation* primarily for and essential to medical care referred to in subparagraph (A). . . .

Prior to the enactment in 1942 of Section 23(x),[6] medical expenses fell within the category of nondeductible personal expenses.[7] Due to the pressure of rising individual tax rates growing out of the exigencies of war, a genuine need for the relief of taxpayers suffering from extraordinary medical expenses[8] was created. Section 23 (x) was enacted, and although amended in part, the subsection here involved remained unchanged until 1954. The definition of "medical care" under the 1942 amendment of the 1939 code provided that:

> . . . medical care . . . shall include amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body . . .

This definition was broad enough to relieve the burden of almost any kind, type or description of medical expenditure. By the same token, the opportunity was presented for tax avoidance by those attributing a medical motive to a trip induced primarily by motives other than medical and primarily for pleasure.

In order to keep the deduction within the confines of its purpose, the courts, in the few decisions involving the point, set out a number of tests. These tests, although often helpful, are not always applicable. Some of the most notable are: the motive or purpose of the taxpayer[9] (the expenditure must be incurred primarily for the prevention or mitigation of a particular physical or mental defect);[10] the justification of such motive or purpose (whether the trip was taken upon the advice of a physician);[11] the proximity of time between the onset, recurrence, or continuance of the disease or condition and the treatment or care.[12] However, even with these tests and in view of the essentially factual nature of the problem, the distinction between deductible and nondeductible medical expenses is not as clear cut as it might be.

It was held prior to the 1954 code that if a trip was shown to have

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6. See note, 1 *supra.*

7. Bourne v. Commissioner, 62 F.2d 648 (4th Cir. 1933) (involving lawyer's medical expenses).

8. "This allowance is recommended inconsideration of the heavy tax burden that must be borne by individuals during the existing emergency and of the desirability of maintaining the present high level of public moral." S. Rep. No. 1631, 77th Cong., 2d Sess. 6 (1942).

9. Stringham v. Commissioner, 12 T.C. 580, *aff'd.* 183 F.2d 579 (6th Cir. 1949); Havey v. Commissioner, 12 TC 409 (1949).

10. U.S. Treas. Reg. 118, § 39.23 (x) — 1 (d) (1). Travel and related expenses incurred for the general health of an individual do not qualify as medical expenses; they are primarily personal expenses for which no deduction is allowed.

11. Havey v. Commissioner, 12 T. C. 409 (1949). However, note that not every expenditure prescribed by a doctor is to be classed as a medical expense. *E.g.*, Semour v. Commissioner, 14 T. C. 1111 (1950).

12. See note 9 *supra.*

been motivated by, and primarily for, the mitigation, alleviation, cure, etc. of a taxpayer's poor health, travel expenses, including food and lodging during the entire length of the trip, were deductible.[13] Consequently, even assuming that the trip was for legitimate medical reasons, many purely personal expenses could be tacked on the bill. (It is well to note that in no case has a taxpayer been allowed to deduct the food and lodging expenses incurred by his spouse or a companion where is was not shown that such company was absolutely necessary for his care or health.[14] The significance of this factor will be exemplified later).

The shortcomings of this situation were generally recognized and brought to a head in 1954 when President Eisenhower recommended in his budget message, " . . . to avoid abuses in medical deduction, . . . the definition of medical expenses [should] be tightened to exclude both ordinary household supplies and indirect travel expenses."[15] Shortly thereafter, the president's recommendation was adopted in the 1954 code. Section 213 (e)[16] explicitly, provides that only amounts paid primarily for *transportation* that are essential to medical care shall be deductible, thus excluding expenses for meals and lodging incidental to such transportation. Furthermore, a proposed revenue regulation[17] points out that an amount allowable as a deduction for transportation shall *not* include the cost of any meals and lodging while the taxpayer is away from home receiving medical treatment. For returns filed after 1954 there appears to be no question as to the nondeductibility of expenses for meals and lodging incurred during a trip.

The court, in the instant case, took the unusual position of giving the medical deduction provision of the 1939 code a more liberal construction than in any previous case, in spite of the express legislative and administrative intent under the 1954 code (of which the court was undoubtedly aware) to restrict and limit the provision. It was not argued, nor could it reasonably have been substantiated, that the presence of the taxpayer's wife was essential to the cure, prevention or alleviation of his condition.[18] However, the court, solely on the grounds that a reputable physician "advised that her being with her husbang in Florida 'was advisable'" allowed the

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13. Walkins v. Commissioner, 13 TCM 320 (1954); Duff v. Commissioner, 12 TCM 1305 (1953); Stringham v. Commissioner, 12 T.C. 580, *aff'd.* 183 F.2d 579 (6th Cir. 1949).

Disallowed: Dabkin v. Commissioner, 15 T.C. 886 (1952).

14. If it is necessary for one of the parents to accompany the child because of its physical condition and immaturity, reasonable expenses incurred for travel of the parent are also deductible as medical expenses. I.T. 3786, 1946-1 Cum. Bull. 75 (1946).

15. The N.Y. Times, January 22, 1954, § 2, p. 14.

16. See note 5 *supra.*

17. See note 4 *supra.*

18. "It is significant that Mr. Embry did not see a physician while in Florida, was able to swim, lounge on the beach and on one occasion at least to play golf." Embry's Estate, 143 F. Supp. 603, 605 (W.D. Ky. 1956).

taxpayer to deduct all the expenses incurred for her meals and lodging and a "reasonable amount for incidental expenses."

The significance of this decision lies in its liberal construction of the medical deduction provision of the 1939 code on the part of the district courts in the sixth circuit.[19] Furthermore, it supports the proposition generally accepted that the district courts favor a more liberal construction of the revenue code than the Tax Court.[20]. However, since no cases involving the item of transportation essential to medical care and having application under the 1954 code have been reported, one can reasonably assume that the decisions and rules set forth in the cases decided under the 1939 code will be applicable. The principal case seems to go far in finding that the trip taken by the taxpayer and his wife was primarily for the alleviation and cure of the taxpayer's stroke. Under the present tax law the problem, in this regard, is essentially the same. Taxpayers might certainly be justified in claiming the deduction here involved whenever possible.

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TORTS — UNREASONABLE INVESTIGATION — RIGHT OF PRIVACY

A workmen's compensation claimant brought suit against the compensation carrier and a detective agency employed to investigate the claim. It was alleged that the claimant suffered damages due to mental distress caused by the unreasonable manner in which investigations were conducted. The action was dismissed and plaintiff appealed. *Held*, reversed, the investigative activities, if unreasonable, constituted an invasion of the right of privacy. *Souder* v. *Pendleton Detectives*, 38 So.2d 716 (La. 1956).

Since the right of privacy was not recognized at the old common law, the courts that have considered the question have been absorbed in deciding whether such a right exists. It was not until 1904 that a state court of last resort, in *Pavesich* v. *New England Life Inc. Co.*,[1] perceived that a person had a legal right "to be let alone"[2] — a purely personal right[3] unsupported

19. Generally, district courts follow the previous decisions of other courts in the same circuit but are not bound by the decisions rendered in other circuits.

20. Both courts have original jurisdiction over tax questions. The taxpayer has the choice of contesting the disputed tax assessment in the tax Court before paying the assessment, or paying the assessment and bringing his suite in the District Court for a refund. (Originally the tax court was an administrative board, but although still technically a board, has since acquired the character, respect and dignity of a true court).

1. 122 Ga. 190, 50 S.E. 68 (1904).

2. COOLEY, TORTS, 2d Ed., 29 (1888).

3. The definition most frequently quoted by the courts appears in 41 AM.JUR., *Privacy*, § 11 (1939). "In order to constitute an invasion of the right of privacy, an act must be of such a nature as a reasonable man could see might and probably would cause mental distress and injury to anyone possessed of ordinary feelings and intelligence, situated in like circumstances as the complainant, and this question is to some extent one of law."